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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/575,839	05/22/2000	Matt Ayers	P1088	2761

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LARIVIERE, GRUBMAN & PAYNE, LLP  
19 UPPER RAGSDALE DRIVE  
SUITE 200  
MONTEREY, CA 93940

EXAMINER
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NGUYEN, THANH T

ART UNIT	PAPER NUMBER
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2144

DATE MAILED: 12/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/575,839

Applicant(s)

AYERS ET AL.

Examiner

Tammy T Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE (3) MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 October 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-64 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-64 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 May 2000 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |                                                                                              |                                                                             |
|----------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |



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## Detailed Office Action

1. This action is in response to the amendment filed **October 6, 2003**.
2. Claims **1-64** are pending.

### *Response to Arguments*

3. Applicant's arguments filled on October 6, 2003 have been fully considered, however they are not persuasive because of the following reasons:
4. Applicants' argue that Colby does not teach obtaining a new cost measurement when said network client access said content server.

*In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., obtaining a New cost measurement when said network client access said content server) are not recited in the rejected claims 1, 12, 33, 44, 54. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).*

5. Applicants' argue that Colby does not teach obtaining a new cost measurement when said network client accesses said content server.

*In response to Applicant's argument, the Patent Office maintain the rejection because Colby discloses obtaining a new cost measurement when said network client accesses*

*said content server by discloses calculating request including bandwidth, delay and frame Loss Ratio to find the best fit server. For example " The Internet Proximity Assist module of the content-aware flow switch assigns a preference to servers which are determined to be closet to the client" as shown in col.9, lines 5-32. Clearly shown that obtaining a new cost measurement when said network client accesses said content server.*

6. Applicants' Argue that Colby does not disclose one of the elements of claim 32.

*In response to Applicant's argument, the Patent Office maintain the rejection because Colby discloses all elements of claim 32 as shown col.16, lines 50-65, col.18, line 63 to col.19, line 7, col.7, line 58 to col.8, line 15. Clearly show all limitations of claim 32.*

7. Examiner by mistake was input claim 32 for rejection under 103. Therefore, Applicants please note that no specific basis of rejection under 103 was provided.

8. Applicants' argue that neither Jang nor Colby teach measuring the time that it takes for data to move from a plurality of network server locations to said client.

*In response to Applicant's argument, the Patent Office maintain the rejection because Colby discloses measuring the time that it takes for data to move from a plurality of network server locations to said client as shown in abstract, col.2, lines 47-67, col.17, lines 40-59, and col.20, lines 25-39 also show "The Internet Proximity Assist module of the content-aware flow switch assigns a preference to servers which are determined to be closet to the client". Clearly show that measuring the time that it takes for data to move from a plurality of network server locations to client.*

9. Therefore, the Examiner asserts that cited prior arts teach or suggest the subject matter broadly recited in independent claims 1, 12, 22, 31, 32, 33, 44, 54, 63 and 64.

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*Claims 2-11, 13-21, 2330-29 are also rejected at least by the virtue of their dependency on independent claims and by other reasons set forth in the previous office action [see paper no. 12].*

10. *Accordingly, claims 1-28 are respectfully rejected.*

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

12. Claims 1-64 rejected under 35 U.S.C. 102(e) as being clearly anticipated by Colby et al. (USPN 6,006,264 – Date of Patent: December 21, 1999, herein referred to as “Colby”).

13. As to claim 1, Colby teaches the invention as claimed, including a method for directing a network client requesting access to content to one of a plurality of content servers that can provide said content, comprising:

directing a network client to a said one of said content servers based on one or more cost measurements indicative of operational characteristics of the network (col.2, lines 47-59).

14. A to claim 2, Colby teaches the invention as claimed, further comprising:

obtaining a new cost measurement when said network client accesses said content server (col.3, lines 10-27, and col.2, lines 47-58); and

using said new cost measurement as an indicator of operational characteristics of the network in connection with subsequent requests for access to said content that can be provided by said content server (col.14, lines 53-67).

15. As to claim 3, Colby teaches the invention as claimed, wherein said content servers are associated with a network server having an identity (col.3, lines 10-27, and col.14, lines 55-67), and wherein said network client requests content from said network server, and further comprising:

mapping the identity of the network server (content-aware flow switch 110) to said content servers (col.8, lines 34-55).

16. As to claim 4, Colby teaches the invention as claimed, further comprising measuring network performance between said network client and a said one of said content servers (col.2, lines 47-58, and col.3, lines 10-27).

17. As to claim 5, Colby teaches the invention as claimed, wherein an attribute of network performance comprises network latency (col.15, lines 1-48).

18. As to claim 6, Colby teaches the invention as claimed, wherein network latency is

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measured passively by determining the time between a syn ack message sent by said network client and an ack message sent by one of said content servers (col.8, lines 34-55, and col.3, lines 10-27).

19. As to claim 7, Colby teaches the invention as claimed, further comprising measuring network performance between said network client and another of said content servers (col.11, line 60 to col.12, line 5).

20. As to claim 8, Colby teaches the invention as claimed, further comprising determining the location of said network client by circular intersection and inferring network performance associated with accessing said content server to said network client based on a performance measurement to said content server in connection with another physically proximate network client (col.3, lines 10-27).

21. As to claim 10, Colby teaches the invention as claimed, further comprising inferring network performance of serving said network client from said content server by determining a weighted average of network performance between said content server and other network clients based on physical proximity of said other network clients to said network client and performance of said content server for said other network clients (col.7, line 58 to col.8, line 15, and col.16, lines 40-65).

22. As to claim 11, Colby teaches the invention as claimed, further comprising:

(a) measuring network latency between a content server and a plurality of other network clients (col.17, lines 38-58, and col.18, lines 63 to col.19, line 7);

(b) determining physical distances between said other network clients and said network client (col.7, line 58 to col.8, line 15, and col.16, lines 40-65); and

(c) computing a weighted average of said latency measurements as a function of said distances, wherein said weighed average comprises an estimate of the latency between said network server and said inferable network client (col.7, line 58 to col.8, line 15, and col.16, lines 40-65).

23. As to claim 12, Colby teaches the invention as claimed, including a method for directing a network client requesting access to content from a network server to one of a plurality of content servers that can provide said content, each said content server having an address, said network server having an identity, said method comprising:

(a) identifying a network server associated with content requested by said network client (col.3, lines 10-28, and col.9, lines 1-35);

(b) identifying a said one of said content servers based on said identity of said network server and one or more cost measurements (col.2, lines 47-57) indicative of operational characteristics of the network (col.6, lines 42-63, and col.10, lines 1-39); and

(c) providing the network client with the address of said content server identified (col.10, lines 1-39) in step (b).

24. As to claim 22, Colby teaches the invention as claimed, including a method for directing a network client requesting access to content from a network server to one of a plurality of content servers providing (col.5, lines 62-67) said, content for said network server, each said content server having an address (col.10, lines 1-37, and col.6, lines 42-64), said network server having an identity (col.3, lines 1-28), said method comprising returning the address of a content server that may provide said content the identity (col.19, lines 8-19) of the network server based on one or more cost measurements (col.15, lines 10-47) indicative of operational characteristics



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of the network, obtaining a new cost measurement (col.15, lines 10-47) when said network client accesses said content server (col.2, lines 47-67, col.), and using said new cost measurement as an indicator of operational characteristics of the network in connection with subsequent requests for access to said content that can be provided by said content server (col.8, lines 34-55, col.20, lines 1-25).

25. As to claim 32, Colby teaches the invention as claimed, including a method for inferring operational characteristics associated with a plurality of network clients to an inferable network client, comprising:

(a) measuring network latency between a network server and a plurality of network clients (col.3, lines 10-27, Fig.19, col.17, lines 38-58, col.18, line 63 to col.19, line 7, and col.15, lines 1-49);

(b) determining physical distances between said network clients and an inferable network client (col.7, line 58 to col.8, line 15, and col.16, lines 40-65); and

(c) computing a weighted average of said latency measurements as a function of said distances, wherein said weighed average comprises an estimate of the latency between said network server and said inferable network client (col.7, line 58 to col.8, line 15, and col.16, lines 40-65).

26. Claim 33 has similar limitations a claim 1; therefore, it is rejected under the same rationale.

27. Claims 13,14-18, 20, 23-27, 29, 34,36-40, 42, 45, 46-50, 52, 55-59, and 61 have similar limitations as claims 2, 4-8,11; therefore, they are rejected under the same rationale.

28. Claims 11, 21, 30, 43, 53, 62, and 64, have similar limitations as claim 32; therefore,

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they are rejected under same rationale.

29. Claim 54 has similar limitations as claim 22; therefore, it is rejected under same rationale.

30. Claim 44 has similar limitations as claim 12; therefore, it is rejected under same rationale.

***Claim Rejections - 35 USC § 103***

31. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

32. Claims 31, 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colby et al., (hereinafter Colby) U.S. Patent No. 6,006,264 in view of Jang, jae-Shin., (hereinafter Jang) U.S. Patent No. 6,526,283.

33. As to claim 31, Colby teaches the invention as claimed, including a method for determining the physical location of a network client comprising:

(a) measuring the time that it takes for data to move from a plurality of network server locations to a network client (abstract, col.2, lines 47-67, col.17, lines 40-59, and col.20, lines 25-39);

(b) converting said times to distance equivalents (col.15, lines 10-30).

Colby does not explicitly teach a forming a plurality of intersecting circles using said distance equivalents as the radius of circles with said network server locations as the center; and

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determining the physical location of said network client from the intersection of said circles.

However, Jang teaches a forming a plurality of intersecting circles using said distance equivalents as the radius of circles with said network server locations (Base stations) as the center (col.6, lines 55-67); and determining the physical location of said network client (Mobile telephone) from the intersection of said circles (Abstract, col.2, lines 21-36, col.4, lines 32-44, and col.4, lines 48-67). It would have been obvious to one of ordinary skill in the Data Processing art at the time of the invention to combine the teachings of Colby and Jang to have a performing a plurality of intersecting circle using distance equivalents a the radius of circle with network server locations as center and determining the physical location of client from the intersection of circle because it would have an efficient system that can provide specific degree or amount of separation between two points, lines, surfaces, or objects or an advance along a route measured linearly.

34. Claims 9, 19, 28,41, 51, 60 and 63 have similar limitations as claim 31; therefore, they are rejected under the same rationale.

### ***Conclusion***

35. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

36. Any inquiries concerning this communication or earlier communications from the examiner should be directed to **Tammy T. Nguyen** who may be reached via telephone at **(703) 305-7982**. The examiner can normally be reached Monday through Friday between 8:00 a.m. and 4:30 p.m. eastern standard time.

If you need to send the Examiner, a facsimile transmission regarding this instant application, please send it to **(703) 872-9306**. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's Supervisor, **David Wiley**, may be reached at **(703) 308-5221**.

*TTN*

December 17, 2003

  
**DAVID WILEY**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 2100**